

REMARKS

Claims 1-15, 17-20, 35-50, 52-56 and 58-62 are pending in the present application. Claims 1-15, 17-20, 35-50, 52-56 and 58-62 have been examined and are rejected. Applicant has amended no claims. Applicant believes that the present application is now in condition for allowance, which prompt and favorable action is respectfully requested. No new matter has been added.

35 U.S.C. § 102(e) Anticipation Rejections

Claims 1-3, 5-15, 17-20, 35-44, 46-50, 52-56 and 58-62 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,158,504 to Kadaba *et al.* ("Kadaba"). Applicant respectfully traverses this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant submits that Kadaba does not and cannot anticipate under 35 U.S.C. § 102 the presently claimed invention of independent claims 1, 12, 35, 52, 58 and 62 because Kadaba does not describe, either expressly or inherently, the identical inventions in as complete detail as are contained in the claims.

Regarding independent claims 1, 12, 35, 52, 58 and 62, Applicant's independent claims 1, 12, 35, 52, 58 and 62 recite, *inter alia*, a "**request** [] [including an identification/identifying/identifies] **a specific** [**service class/class of service**]" and "**each service class corresponding to a particular type of data** to be transmitted by the mobile station" which is not disclosed in Kadaba. The Office Action alleges:

Kadaba teaches ... a request [] including an identification (the wireless unit sends the buffer size; Col. 4, line 61 through Col. 5, line 17) of a specific service class from a mobile station ... each service class (autonomously and/or scheduling) corresponding to a particular type of data to be transmitted by the mobile station (Office Action, p. 3; emphasis added).

Applicant respectfully points out that the allegations of disclosure in the Office Action do not correspond with Applicant's claims. Specifically, Applicant claims a "service class/class of service" that is **both** (1) *included in a* transmitted/receive "**request**" **and** (2) "*correspond[s] to a particular **type of data***." In error, the Office Action alleges a "service class" that is neither (1) included in a transmitted/received "request" nor (2) corresponds to a type of data.

Specifically as stated above, the Office Action alleges Kadaba's "autonomously and/or scheduling" discloses Applicant's "service class." (Office Action, p. 3). However, Kadaba does not disclose that Kadaba's "autonomously and/or scheduling" is transmitted/received in a "request." In fact, the Office Action substitutes an entirely different element (Kadaba's "buffer size") as being allegedly transmitted/received in a "request" which does not disclose Applicant's claimed invention **in as complete detail as is contained in the claims** as is **required** for a proper anticipation rejection under 35 U.S.C. §102. Furthermore, Kadaba's "autonomously and/or scheduling" does not disclose Applicant's claimed invention reciting, *inter alia*, "**service class corresponding to a particular type of data** to be transmitted" **in as complete detail as is contained in the claims** as is **required** for a proper anticipation rejection under 35 U.S.C. §102.

While Kadaba may disclose a "buffer size" and a transmission method of "autonomously and/or scheduling" data, Kadaba does not disclose a "**request** [] [including an identification/*identifying/identifies*] *a specific [service class/class of service]*" and "*each service class corresponding to a particular type of data* to be transmitted by the mobile station" as claimed by Applicant in independent claims 1, 12, 35, 52, 58 and 62. Therefore, since Kadaba does not disclose Applicant's claimed invention **in as complete detail as is contained in the claims** as is **required** for a proper anticipation rejection, Kadaba **cannot** anticipate, according to 35 U.S.C. §102, Applicant's invention a presently claimed. Accordingly, Applicant respectfully requests the rejections of independent claims 1 with claims 2, 3 and 5-11 depending therefrom, independent claim 12 with claims 13-15 and 17-20 depending therefrom, independent claim 35 with claims 36-44 and 47-50 depending therefrom, independent claim 52 with claims 53-56 depending therefrom, independent claim 58 with claims 59-61 depending therefrom, and independent claim 62 be withdrawn.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on Kadaba and U.S. Publication No. 2002/0183039

Claims 4 and 45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kadaba in view of U.S. Publication No. 2002/0183039 to Padgett *et al.* ("Padgett"). Applicant respectfully traverses these rejections as hereinafter set forth.

The nonobviousness of independent claim 1 precludes a rejection of claim 4 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests the Examiner withdraw the rejection to independent claim 1 and claim 4 which depends therefrom.

The nonobviousness of independent claim 35 precludes a rejection of claim 45 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests the Examiner withdraw the rejection to independent claim 35 and claim 45 which depends therefrom.

Finality of Next Office Action Precluded

Applicant has traversed the rejection of claims 1-15, 17-20, 35-50, 52-56 and 58-62 by argument and not amendment. Therefore, the finality of the next office action would be improper as Applicant is entitled to an examination on the merits and to amend as a matter of right. In the present Office Action, Applicant's independent claims 1, 12, 35, 52, 58 and 62 were not completely examined as to all of the elements. Accordingly, Applicant submits that this omission to examine all elements of Applicant's claimed invention amounts to a failure to articulate a *prima facie* case of unpatentability and the burden to rebut this "rejection" has not yet shifted to the Applicant. Consequently, a next office action cannot properly be made final since only then would the Applicant be obligated to rebut the rejection, presuming that such an office action sets forth a *prima facie* case. (MPEP § 706.07(a)).


REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant respectfully submits that all of the pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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By:


Donald Kordich, Reg. No. 38,213
(858) 658-5928

QUALCOMM Incorporated
5775 Morehouse Drive
San Diego, California 92121
Telephone: (858) 651-5527
Facsimile: (858) 658-2502